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PAGE 01 GENEVA 03045 151836Z

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TAGS: TSPA, PFOR, UN, UR
SUBJECT: OUTERSPACE LEGAL: SCOPE OF MOON TREATY

1. LEGAL SUBCOMMITTEE'S MOON TREATY WORKING GROUP 13 MAY DISCUSSED TREATY SCOPE. THIS RESULTED FROM WG ACCEPTANCE OF CHAIRMAN'S PROPOSAL FOR ARTICLE-BY-ARTICLE EXAMINATION OF BULGARIAN WORKING PAPER SETTING OUT TREATY TEXT WHICH INCORPORATES SOVIET-PROPOSED CHANGES IN NATURAL RESOURCES ARTICLE PLUS CERTAIN OTHER MODIFICATIONS CONCERNING WHICH NO PUBLIC EXPLANATION HAS YET BEEN OFFERED.

2. AS IN OTHER VERSIONS, NEW "BULGARIAN" TEXT SETS OUT DEFINITIONS AND SCOPE IN ARTICLE I. HOWEVER, SCOPE PARAGRAPH REFLECTS MODIFICATION OF LAST YEAR'S UK-PROPOSED COMPROMISE FORMULATION EXTENDING TREATY COVERAGE TO PLANETS AND OTHER BODIES OF SOLAR SYSTEM BY PROVIDING THAT REFERENCES TO "MOON" IN TEXT SHALL BE DEEMED TO APPLY ALSO TO OTHER CBS. WHERE UK PROPOSAL RECOGNIZES POSSIBLE DESIRABILITY OF NEGOTIATING "SEPARATE ARRANGEMENTS" REGARDING INDIVIDUAL CGS COVERED BY TREATY AND SETS OUT MECHANISM FOR CONVENING CONFERENCE FOR THAT PURPOSE, BULGARIAN DRAFT PROVIDES THAT PRESENT TREATY SHALL CEASE

PAGE 02 GENEVA 03045 151836Z

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TO BE IN FORCE WITH RESPECT TO ANY CB ON WHICH SUCH SEPARATE ARRANGEMENT IS CONCLUDED.

3. IN COURSE OF DISCUSSION IT BECAME EVIDENT THAT PREPONDERANCE OF DELS NOW ACCEPT EXPANDING TREATY SCOPE IN SOME FORM. HOWEVER, BULGARIAN FORMULATION APPEARED TO BE GAINING CONSIDERABLE SUPPORT AS AGAINST UK, AND UK DEL SAID HE WOULD NOT INSIST ON BRITISH WORKING IF GENERALLY ACCEPTABLE ALTERNATIVE WERE FOUND. SINCE NEITHER VERSION IS ACCEPTABLE TO US, WE THOUGHT IT ADVISABLE TO RESTATE US POSITION ON SCOPE AND ITS FORMULATION.

4. ACCORDINGLY, ALT REP HOSENBALL PRESENTED OUR VIEWS IN SOME DETAIL, DRAWING ON INSTRUCTIONS AND ALSO EMPHASIZING THAT HE SPOKE AS REPRESENTATIVE OF USG AGENCY OPERATIONALLY CONCERNED WITH SPACE ACTIVITIES OF TYPE TO BE COVERED BY TREATY. HE NOTED BASIC US POSITIONS ON TREATY SCOPE HAD NOT CHANGED. US IS NOW EXTENSIVELY ENGAGED IN PLANETARY EXPLORATION, PLANS CONSIDERABLY MORE, AND HAS NO PRESENT PLANS FOR MANNED MISSIONS TO THE MOON. ADDITIONAL NEW FOCUS IS SOLAR EXPLORATION, WITH HELIOS MISSION IN CONJUNCTION WITH FRG SET FOR NEAR FUTURE. OTHERS (USSR) ALSO ACTIVE IN PLANETARY EXPLORATION, AS USSR REP HAD POINTED OUT IN HIS GENERAL DEBATE STATEMENT. UNDER THESE CIRCUMSTANCES, ALT REP CONTINUED, IT WOULD BE VERY DIFFICULT TO PERSUADE US LEGISLATORS TO GIVE ADVICE AND CONSENT TO RATIFICATION OF TREATY WHICH STATED ITS APPLICABILITY TO OTHER BODIES OF SOLAR SYSTEM BESIDES MOON IN SO CONDITIONAL MANNER AS UK AND ESPECIALLY BULGARIAN FORMULATIONS DO, AND THUS DISTORTED BALANCE OF EMPHASIS ON WHAT TREATY COVERS. THUS, REFERENCE TO "OTHER CELESTIAL BODIES" (APPROPRIATELY DEFINED) THROUGHOUT TEXT WAS MINIMUM WE COULD ACCEPT.

5. ON MERITS, HOENBALL ADDED, US OPERATING AGENCY HAD FOUND NOTHING IN DRAFT TREATY WHICH WOULD NOT APPLY WITH EQUAL FORCE TO ACTIVITIES WITH RESPECT TO ALL CBS SUBJECT OF EXPLORATION; IF CONDITIONS SHOULD SUBSEQUENTLY BE DISCOVERED IN PARTICULAR CB CALLING FOR SPECIAL TREATMENT, THIS COULD BE DONE VIA PROTOCOL TO PRESENT TREATY RATHER THAN SEPARATE TREATY INSTRUMENT. TO TAKE LATTER COURSE,

AS SUGGESTED BY UK AND BULGARIA FORMULATIONS, WOULD LEAD TO AWKWARD DRAFTING PROBLEMS WITH PARTICULAR HAZARD OF REPEATED REDUNDANCY OF PROVISIONS ACTUALLY SET OUT DEFINITIVELY IN OUTER SPACE TREATY. WE CONTINUE TO MAINTAIN, HE CONCLUDED, THAT OST MUST REMAIN PRIMARY DOCUMENT GOVERNING SPACE ACTITIVITES.

6. USSR INTERVENED BRIEFLY, STATING THERE WERE THREE ACTUAL ALTERNATIVES REGARDING SCOPE: (A) MOON ALONE; (B) MOON AND OTHER CBS CONDITIONALLY; (C) MOON AND OTHER CBS DEFINITVELY. WITHOUT STATING WHICH ALTERNATIVE USSR NOW SUPPORTS, SOVDEL MERELY SAID USSR INSISTS THAT SCOPE BE LAST UNRESOLVED ISSUE IN TREATY TO BE DEALT WITH; ON PARACTICAL BASIS RESOURCES AND MISSION REPRTING QUESTIONS MUST BE SETTLED FIRST. DISCUSSION THEN TURNED TO RESOURCES (SEPTEL).

7. COMMENT: IT SEEM
TO EXPANDED TREATY SCOPE. HOWEVER, IT MAY STILL RESIST FORMULATION ACCEPTABLE TO US. ADDED COMPLICATING FACTOR IS WISH OF SOME DELS (E.G., ARGENTINA) TO EXPAND TREATY TO COVER ALL OTHER CBS, NOT JUST THOSE OF SOLAR SYSTEM. WE TREID TO EXPLAIN GROUNDS FOR LIMITED SCOPE EXPANSION TO ARGENTINE REP; IT WAS UNCERTAIN TO WHAT DEGREE HE WAS CONVINCED. WE BELIEVE, HOWEVER, THAT GROUNDS OF PRACTICALITY (SOLAR SYSTEM BEING EXTENT OF WHAT CAN BE EXPLORED IN MANNER RELEVENT TO TREATY WITHIN DISCERNIBLE FUTURE) MAY PROVE PERSUASIVE TO MOST DELS. IN ADDITION, WE ARE CONTINUING TO STRESS OUR VIEW THAT OST, WHICH OF COURSE APPLIES TO ALL CBS, REMAINS BASIC TREATY ON SPACE EXPLORATION WHOSE VALIDITY WILL NOT BE AFFECTED BY MOON TREATY. WHENEVER ONE MAY BE AGREED UPON.ABRAMS